

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CONNECTU LLC,

Plaintiffs,

v.

MARK ZUCKERBERG, EDUARDO SAVERIN,
DUSTIN MOSKOVITZ, ANDREW MCCOLLUM,
CHRISTOPHER HUGHES, and FACEBOOK,
INC.,

Defendants.

MARK ZUCKERBERG, and FACEBOOK, INC.,

Counterclaimants,

v.

CONNECTU LLC,

Counterdefendant,

and

CAMERON WINKLEVOSS, TYLER
WINKLEVOSS, and DIVYA NARENDRA,

Additional Counterdefendants.

CIVIL ACTION NO. 1:04-CV-11923
(DPW)

**AFFIDAVIT OF ROBERT D. NAGEL IN SUPPORT OF FACEBOOK DEFENDANTS'
OPPOSITION TO CONNECTU LLC'S MOTION TO COMPEL ANSWERS TO
INTERROGATORIES NOS. 19-23**

I, ROBERT D. NAGEL, declare as follows:

1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel for Defendants Mark Zuckerberg, Dustin Moskovitz, Andrew McCollum, Christopher Hughes, and Facebook, Inc. (collectively, the "Facebook Defendants"). I make this Affidavit in support of the Facebook Defendants' Opposition to ConnectU LLC's Motion to Compel Answers to Interrogatories Nos. 19-23. I am an active member in good standing of the Bar of the State of California, and am admitted to appear *pro hac vice* before this court. I have personal knowledge of the facts stated therein and if called as a witness, could and would competently testify thereto.

2. On November 16, 2005, I participated in a telephonic meet and confer regarding ConnectU's second sets of interrogatories and requests for production. Also participating were ConnectU's counsel, Troy Grabow and Margaret Esquenet, and Facebook Defendants' counsel, Monte Cooper.

3. On November 18, 2005, the Court held a hearing regarding various pending motions to compel and for protective order. I was in attendance, representing Facebook Defendants with Neel Chatterjee and Jeremy Oczeck. Immediately after the hearing outside the courtroom, Neel Chatterjee offered to follow the rolling production associated with memory devices, which ConnectU's counsel John Hornick proposed during the hearing. Mr. Hornick immediately declined that offer.

4. While discussing Facebook Defendants' response to Interrogatory No. 22 at the November 16, 2005 meet and confer, Facebook Defendants' counsel Monte Cooper explained that Facebook Defendants would not supplement their response to this interrogatory because ConnectU had not adequately identified its trade secrets and that Facebook Defendants' motion to compel the identification of trade secrets was still pending.

5. While discussing Facebook Defendants' response to interrogatories at the November 16, 2005 meet and confer, Facebook Defendants' counsel Monte Cooper objected to the interrogatories to the extent they were compound and constituted interrogatories above the number allowed by the Local Rules.

6. While discussing Facebook Defendants' response to Interrogatory No. 23 at the November 16, 2005 meet and confer, Facebook Defendants' counsel Monte Cooper questioned the broad scope of ConnectU's request, including why such detailed information regarding every Facebook investor and their entire course of dealings with Facebook were relevant to this matter.

7. Attached hereto as **Exhibit B** is a true and correct copy of a letter from Monte Cooper to John F. Hornick dated August 22, 2005

8. Attached hereto as **Exhibit C** is a true and correct copy of a letter from Robert D. Nagel to John F. Hornick dated November 23, 2005.

9. Attached hereto as **Exhibit D** is a true and correct copy of a letter from Robert D. Nagel to Troy E. Grabow dated December 9, 2005.

10. Attached hereto as **Exhibit E** is a true and correct copy of a letter from Robert D. Nagel to Troy E. Grabow dated November 30, 2005.

11. Attached hereto as **Exhibit F** is a true and correct copy of a letter from Robert D. Nagel to John F. Hornick dated December 1, 2005.

12. Attached hereto as **Exhibit G** is a true and correct copy of a letter from Troy E. Grabow to Monte Cooper dated November 4, 2005.

13. Attached hereto as **Exhibit H** is a true and correct copy of a letter from Troy E. Grabow to Robert D. Nagel dated December 6, 2005.

14. Attached hereto as **Exhibit I** is a true and correct copy of a paper presented to

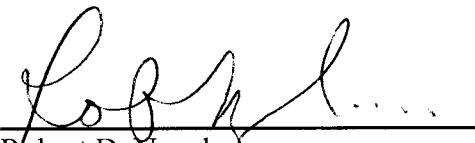
International Society for New Institutional Economics Conference by Jennifer Kuan, *Hostage Exchange in Venture Capital Networks* (July 2004), available at
<http://www.isnie.org/ISNIE04/Papers/kuan.pdf>, p. 6 and n.1.

15. Attached hereto as **Exhibit J** is a true and correct copy of a newspaper editorial written by Matt Marshall, *Venture Firms' 'creative destruction'*, San Jose Mercury News, Aug. 17, 2005 available at:

http://www.mercurynews.com/mld/mercurynews/business/columnists/business_extras/12404790.htm

16. Attached hereto as **Exhibit K** is a true and correct copy of pages 1-3, 7, 86-88, 115-117, 214-220, 295-297 and 405 to the August 9, 2005 deposition of Cameron H. Winklevoss on behalf of ConnectU LLC.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration is executed on this 23rd day of January, 2006, at Menlo Park, California.

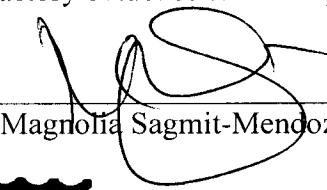


Robert D. Nagel

State of California

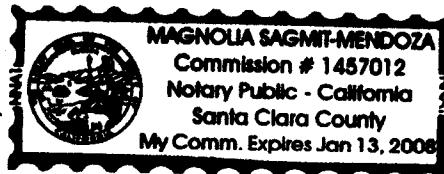
County of San Mateo

Subscribed and sworn to (or affirmed) before me on this 23rd day of January, 2006 by Robert D. Nagel, personally known to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Magnolia Sagmit-Mendoza, Notary

(Seal of Notary)



Dated: January 23, 2006.

Respectfully submitted,

/s/ Robert D. Nagel /s/

G. Hopkins Guy, III*

I. Neel Chatterjee*

Monte M.F. Cooper*

Robert D. Nagel*

ORRICK, HERRINGTON & SUTCLIFFE LLP

1000 Marsh Road

Menlo Park, CA 94025

Telephone: (650) 614-7400

Facsimile: (650) 614-7401

hopguy@orrick.com

nchatterjee@orrick.com

mcooper@orrick.com

rnelagel@orrick.com

Steve M. Bauer

Jeremy P. Oczek

PROSKAUER ROSE, LLP

One International Plaza, 14th Floor

Boston, MA 02110-2600

Telephone: (617) 526-9600

Facsimile: (617) 526-9899

sbauer@proskauer.com

joczek@proskauer.com

ATTORNEYS FOR MARK ZUCKERBERG,

DUSTIN MOSKOVITZ, ANDREW

MCCOLLUM, CHRISTOPHER HUGHES, and

FACEBOOK, INC.

* Admitted *Pro Hac Vice*